

RESTORING FINANCIAL MARKET FREEDOM ACT OF 2017

JANUARY 2, 2019.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 4247]

The Committee on Financial Services, to whom was referred the bill (H.R. 4247) to repeal title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

On November 11, 2017, Rep. Ted Budd introduced the “Restoring Financial Market Freedom Act of 2017”, which repeals Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”)(P.L. 111–203), which provides the Financial Stability Oversight Council (FSOC) the authority to designate certain payments and clearing organizations as systemically important “financial market utilities” (FMUs). The bill also retroactively repeals all previous FMU designations.

BACKGROUND AND NEED FOR LEGISLATION

The goal of H.R. 4247 is to promote financial stability and restore private sector due diligence and accountability on Financial Market Utilities (FMUs) so that they are incentivized to engage in prudent risk management, clearing and settlement activities.

Title VII of the Dodd-Frank Act requires that certain standardized over-the-counter derivatives contracts be cleared through central counterparties (CCPs) in order to mitigate any perceived sys-

temic risk of what are known as over-the-counter derivatives. Although the proponents of this requirement believed that central clearing would promote financial stability by netting trades and centralizing the monitoring of risk, critics pointed out that CCPs instead concentrated systemic risk.

This troublesome concentration of risk is compounded by the decision of the Dodd-Frank Act's drafters to anoint CCPs as the next generation of "too big to fail" firms. Title VIII of the Dodd-Frank Act authorizes the FSOC to designate CCPs and payment systems as "systemically important financial market utilities," or SIFMUs, which the Dodd-Frank Act defines as "any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person." A clearinghouse or a payment system designated by the FSOC as a SIFMU faces "heightened prudential supervision" by the Federal Reserve, which may prescribe risk-management standards for such entities and participate in examinations conducted by their primary federal regulator, typically the Securities and Exchange Commission (SEC) and/or the Commodity Futures Trading Commission (CFTC). Further, a designated FMU gains immediate access to the Federal Reserve's discount window.

While experts disagree on whether increased reliance upon CCPs amplifies rather than mitigates systemic risk, there is broad agreement that designating these organizations as "systemically important" and granting them immediate access to the Federal Reserve's discount window increases financial instability by creating the perception that they are "too big to fail." As New York Times columnist Gretchen Morgenson put it, "these large and systemically important financial utilities that together trade and clear trillions of dollars in transactions appear to have won the daily double—access to federal money, without the accountability."

In 2013 testimony before the Financial Services Committee, former FDIC Chairman Sheila Bair warned that granting FMUs access to the discount window "not only gives these firms a real advantage over other 'non' systemic competitors, it opens up taxpayers to potential losses and creates moral hazard." According to former Chairman Bair, rather than making the financial system safer, Title VIII in fact makes it less stable because it "increases the likelihood of clearinghouses engaging in risky activity, adding an element of potential instability to an area where it had not previously existed." Based upon her view that "FMUs will very likely become the new [Government Sponsored Enterprises]," former Chairman Bair has recommended the repeal of this "unwarranted expansion of the government safety net".

The legislative history of the Dodd-Frank Act shows that at least some of its proponents recognized the danger of expanding the federal safety net to include FMUs. Even former Chairman Barney Frank saw the hazards of creating a new category of "too big to fail" institutions. During the Financial Services Committee's markup of financial reform legislation in 2009, Republicans offered an amendment to strike the FMU provision from the bill. Rather than defend the provision, Chairman Frank supported the Republican amendment to strike it, describing the attempt to expand the Fed's regulatory fiefdom as "an example of overreach on the part of some

for the Federal Reserve.” But the FMU provision reemerged in the Senate’s version of the financial reform bill, ultimately making it into the Dodd-Frank conference report that was signed into law by President Obama.

To address the misguided effort codified in the Dodd-Frank Act, H.R. 4247 is premised upon a belief that firms that operate without the benefit of a federal safety net and reap the profits and suffer the losses from the risks they undertake should not be subject to the same form of intrusive prudential regulation as federally insured depository institutions whose risks are ultimately backstopped by the taxpayer; no such justification exists for firms that are not covered by that safety net.

As an initial matter, proponents of imposing a bank-centric prudential regulatory model on U.S. capital markets should be required to explain how such a regime would make the financial system any safer, given the manifest failures of U.S. regulators in the run-up to the financial crisis. The regulators—in many cases embedded in the banks that got into the most severe trouble—were unable to see the crisis coming. This included the Federal Reserve, with its stable of 300 PhD economists and vast army of bank examiners.

As noted by former SEC Commissioner Gallagher, the policy-makers that pushed to regulate the capital markets like they are banks “adhere to a false narrative of the financial crisis that says capital markets regulators like the SEC failed, and the markets and market participants overseen by capital markets regulators were a major cause of the financial crisis. Forgotten, of course, are the myriad failed banks, the taxpayer dollar.”

The Dodd-Frank Act’s solution to the regulatory failures exposed by the crisis was to double down by, among other measures, giving the FSOC broad license to centralize more power in the government’s hands through SIFI designations. Subjecting non-bank financial companies to supervision by the Federal Reserve imposes a duplicative, costly, and ultimately ineffective layer of regulation on these institutions, given that the Federal Reserve does not have the expertise necessary to supervise non-banks. In fact, in light of the Federal Reserve’s track record in the run-up to the financial crisis, it is not clear that the Federal Reserve has the expertise to supervise banks properly.

Title VIII of Dodd-Frank reflects the strict view of that legislation’s proponents that any financial firm engaged in any semblance of “risky activity” must be subject to stringent regulatory oversight if the preservation of financial stability is the only goal. By doing so, Title VIII further codified the “too big to fail” doctrine and must be repealed to actually protect taxpayers. Fortunately, H.R. 4247 does just that.

Finally, repealing Title VIII would not leave clearing agencies unregulated. The SEC oversees clearing agencies primarily through its Division of Trading and Markets, the Office of Compliance, Inspections & Examinations (OCIE), and the Division of Enforcement. Trading and Markets administers and executes the agency’s programs relating to the structure and operations of the securities markets, which include regulation of clearing agencies and review of their proposed rule changes. OCIE examines clearing agencies to assess the overall safety, reliability, and efficiency of the clearing

agency and its operations. It also examines clearing agencies for compliance with their own rules and applicable federal laws and regulations. The Enforcement Division investigates and prosecutes violations of securities laws. The SEC may institute civil actions seeking injunctive and other equitable remedies and/or administrative proceedings to, among other things, suspend or revoke registration, impose limitations upon a clearing agency's activities, functions, or operations, or impose other sanctions. Additionally, a derivatives clearing organization (DCO) is a clearinghouse, clearing association, clearing corporation, or similar entity that enables each party to an agreement, contract, or transaction to substitute, through novation or otherwise, the credit of the DCO for the credit of the parties; arranges or provides, on a multilateral basis, for the settlement or netting of obligations; or otherwise provides clearing services or arrangements that mutualize or transfer credit risk among participants. Any clearinghouse that seeks to provide clearing services with respect to futures contracts, options on futures contracts, or swaps must register with the CFTC as a DCO before it can begin to provide such services and is subject to CFTC oversight.

HEARINGS

The Committee on Financial Services held a hearing examining matters relating to H.R. 4247 on April 26, 2017 and April 28, 2017.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on November 15th 2017 and ordered H.R. 4247 to be reported favorably to the House without amendment by a recorded vote of 33 yeas to 25 nays (Record vote no. FC-117), a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House without amendment. The motion was agreed to by a recorded vote of 33 yeas to 25 nays (Record vote no. FC-117), a quorum being present.

Record vote no. FC-117

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Maxine Waters (CA)		X	
Mr. McHenry	X			Mrs. Carolyn B. Maloney (NY)		X	
Mr. King	X			Ms. Velázquez			
Mr. Royce (CA)	X			Mr. Sherman		X	
Mr. Lucas	X			Mr. Meeks		X	
Mr. Pearce	X			Mr. Capuano		X	
Mr. Posey	X			Mr. Clay		X	
Mr. Luetkemeyer	X			Mr. Lynch		X	
Mr. Huizenga	X			Mr. David Scott (GA)		X	
Mr. Duffy	X			Mr. Al Green (TX)		X	
Mr. Stivers	X			Mr. Cleaver		X	
Mr. Hultgren	X			Ms. Moore		X	
Mr. Ross	X			Mr. Ellison		X	
Mr. Pittenger	X			Mr. Perlmutter		X	
Mrs. Wagner	X			Mr. Himes		X	
Mr. Barr	X			Mr. Foster		X	
Mr. Rothfus	X			Mr. Kildee		X	
Mr. Messer				Mr. Delaney		X	
Mr. Tipton	X			Ms. Sinema		X	
Mr. Williams	X			Mrs. Beatty		X	
Mr. Poliquin	X			Mr. Heck		X	
Mrs. Love	X			Mr. Vargas		X	
Mr. Hill	X			Mr. Gottheimer		X	
Mr. Emmer	X			Mr. Gonzalez (TX)		X	
Mr. Zeldin	X			Mr. Crist		X	
Mr. Trott	X			Mr. Kihuen		X	
Mr. Loudermilk	X						
Mr. Mooney (WV)	X						
Mr. MacArthur	X						
Mr. Davidson	X						
Mr. Budd	X						
Mr. Kustoff (TN)	X						
Ms. Tenney	X						
Mr. Hollingsworth	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 4247 will eliminate duplicative, costly and ineffective regulations and eliminate any implied government backstop for certain non-bank financial institutions by repealing Title VIII of the Dodd-Frank Act, which gives the FSOC the authority to designate FMUs as systemically important financial institutions.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

The Committee has not received an estimate of new budget authority contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to Sec. 402 of the Congressional Budget Act of 1974. In compliance with clause 3(c)(2) of rule XIII of the Rules of the House, the Committee opines that H.R. 4247 will not establish any new budget or entitlement authority or create any tax expenditures.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

The cost estimate prepared by the Director of the Congressional Budget Office pursuant to Sec. 402 of the Congressional Budget Act of 1974 was not submitted timely to the Committee.

FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the pro-

visions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rulemakings: The Committee estimates that the bill requires no directed rulemakings within the meaning of such section.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 4247 as the “Restoring Financial Market Freedom Act of 2017.”

Section 2. Repeal of Title VIII

This Section repeals Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, to eliminate the FSOC’s authority to designate FMUs as systemically important and to retroactively repeal all previous FMU designations.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets and existing law in which no change is proposed is shown in roman):

DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Dodd-Frank Wall Street Reform and Consumer Protection Act”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

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[TITLE VIII—PAYMENT, CLEARING, AND SETTLEMENT SUPERVISION

[Sec. 801. Short title.

[Sec. 802. Findings and purposes.

[Sec. 803. Definitions.

[Sec. 804. Designation of systemic importance.

[Sec. 805. Standards for systemically important financial market utilities and payment, clearing, or settlement activities.

[Sec. 806. Operations of designated financial market utilities.

[Sec. 807. Examination of and enforcement actions against designated financial market utilities.

[Sec. 808. Examination of and enforcement actions against financial institutions subject to standards for designated activities.

[Sec. 809. Requests for information, reports, or records.

[Sec. 810. Rulemaking.

[Sec. 811. Other authority.

[Sec. 812. Consultation.

[Sec. 813. Common framework for designated clearing entity risk management.

[Sec. 814. Effective date.]

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[TITLE VIII—PAYMENT, CLEARING, AND SETTLEMENT SUPERVISION

[SEC. 801. SHORT TITLE.

[This title may be cited as the “Payment, Clearing, and Settlement Supervision Act of 2010”.

[SEC. 802. FINDINGS AND PURPOSES.

[(a) FINDINGS.—Congress finds the following:

[(1) The proper functioning of the financial markets is dependent upon safe and efficient arrangements for the clearing and settlement of payment, securities, and other financial transactions.

[(2) Financial market utilities that conduct or support multi-lateral payment, clearing, or settlement activities may reduce risks for their participants and the broader financial system, but such utilities may also concentrate and create new risks and thus must be well designed and operated in a safe and sound manner.

[(3) Payment, clearing, and settlement activities conducted by financial institutions also present important risks to the participating financial institutions and to the financial system.

[(4) Enhancements to the regulation and supervision of systemically important financial market utilities and the conduct of systemically important payment, clearing, and settlement activities by financial institutions are necessary—

- [(A) to provide consistency;
- [(B) to promote robust risk management and safety and soundness;
- [(C) to reduce systemic risks; and
- [(D) to support the stability of the broader financial system.

[(b) PURPOSE.—The purpose of this title is to mitigate systemic risk in the financial system and promote financial stability by—

[(1) authorizing the Board of Governors to promote uniform standards for the—

- [(A) management of risks by systemically important financial market utilities; and
- [(B) conduct of systemically important payment, clearing, and settlement activities by financial institutions;
- [(2) providing the Board of Governors an enhanced role in the supervision of risk management standards for systemically important financial market utilities;
- [(3) strengthening the liquidity of systemically important financial market utilities; and
- [(4) providing the Board of Governors an enhanced role in the supervision of risk management standards for systemically important payment, clearing, and settlement activities by financial institutions.

[SEC. 803. DEFINITIONS.

[In this title, the following definitions shall apply:

[(1) APPROPRIATE FINANCIAL REGULATOR.—The term “appropriate financial regulator” means—

- [(A) the primary financial regulatory agency, as defined in section 2 of this Act;
- [(B) the National Credit Union Administration, with respect to any insured credit union under the Federal Credit Union Act (12 U.S.C. 1751 et seq.); and
- [(C) the Board of Governors, with respect to organizations operating under section 25A of the Federal Reserve Act (12 U.S.C. 611), and any other financial institution engaged in a designated activity.

[(2) DESIGNATED ACTIVITY.—The term “designated activity” means a payment, clearing, or settlement activity that the Council has designated as systemically important under section 804.

[(3) DESIGNATED CLEARING ENTITY.—The term “designated clearing entity” means a designated financial market utility that is a derivatives clearing organization registered under section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) or a clearing agency registered with the Securities and Exchange Commission under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1).

[(4) DESIGNATED FINANCIAL MARKET UTILITY.—The term “designated financial market utility” means a financial market utility that the Council has designated as systemically important under section 804.

[(5) FINANCIAL INSTITUTION.—

[(A) IN GENERAL.—The term “financial institution” means—

[(i) a depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

[(ii) a branch or agency of a foreign bank, as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101);

[(iii) an organization operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601-604a and 611 through 631);

[(iv) a credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752);

[(v) a broker or dealer, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

[(vi) an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3);

[(vii) an insurance company, as defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a-2);

[(viii) an investment adviser, as defined in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2);

[(ix) a futures commission merchant, commodity trading advisor, or commodity pool operator, as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); and

[(x) any company engaged in activities that are financial in nature or incidental to a financial activity, as described in section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

[(B) EXCLUSIONS.—The term “financial institution” does not include designated contract markets, registered futures associations, swap data repositories, and swap execution facilities registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.), or national securities exchanges, national securities associations, alternative trading systems, securities information processors solely with respect to the activities of the entity as a securities information processor, security-based swap data repositories, and swap execution facilities registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), or designated clearing entities, provided that the exclusions in this subparagraph apply only with respect to the activities that require the entity to be so registered.

[(6) FINANCIAL MARKET UTILITY.—

[(A) INCLUSION.—The term “financial market utility” means any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person.

[(B) EXCLUSIONS.—The term “financial market utility” does not include—

[(i) designated contract markets, registered futures associations, swap data repositories, and swap execution facilities registered under the Commodity Ex-

change Act (7 U.S.C. 1 et seq.), or national securities exchanges, national securities associations, alternative trading systems, security-based swap data repositories, and swap execution facilities registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), solely by reason of their providing facilities for comparison of data respecting the terms of settlement of securities or futures transactions effected on such exchange or by means of any electronic system operated or controlled by such entities, provided that the exclusions in this clause apply only with respect to the activities that require the entity to be so registered; and

[(ii) any broker, dealer, transfer agent, or investment company, or any futures commission merchant, introducing broker, commodity trading advisor, or commodity pool operator, solely by reason of functions performed by such institution as part of brokerage, dealing, transfer agency, or investment company activities, or solely by reason of acting on behalf of a financial market utility or a participant therein in connection with the furnishing by the financial market utility of services to its participants or the use of services of the financial market utility by its participants, provided that services performed by such institution do not constitute critical risk management or processing functions of the financial market utility.

[(7) PAYMENT, CLEARING, OR SETTLEMENT ACTIVITY.—

[(A) IN GENERAL.—The term “payment, clearing, or settlement activity” means an activity carried out by 1 or more financial institutions to facilitate the completion of financial transactions, but shall not include any offer or sale of a security under the Securities Act of 1933 (15 U.S.C. 77a et seq.), or any quotation, order entry, negotiation, or other pre-trade activity or execution activity.

[(B) FINANCIAL TRANSACTION.—For the purposes of subparagraph (A), the term “financial transaction” includes—

- [(i) funds transfers;
- [(ii) securities contracts;
- [(iii) contracts of sale of a commodity for future delivery;
- [(iv) forward contracts;
- [(v) repurchase agreements;
- [(vi) swaps;
- [(vii) security-based swaps;
- [(viii) swap agreements;
- [(ix) security-based swap agreements;
- [(x) foreign exchange contracts;
- [(xi) financial derivatives contracts; and
- [(xii) any similar transaction that the Council determines to be a financial transaction for purposes of this title.

[(C) INCLUDED ACTIVITIES.—When conducted with respect to a financial transaction, payment, clearing, and settlement activities may include—

- [(i) the calculation and communication of unsettled financial transactions between counterparties;
- [(ii) the netting of transactions;
- [(iii) provision and maintenance of trade, contract, or instrument information;
- [(iv) the management of risks and activities associated with continuing financial transactions;
- [(v) transmittal and storage of payment instructions;
- [(vi) the movement of funds;
- [(vii) the final settlement of financial transactions;
- and
- [(viii) other similar functions that the Council may determine.

[(D) EXCLUSION.—Payment, clearing, and settlement activities shall not include public reporting of swap transaction data under section 727 or 763(i) of the Wall Street Transparency and Accountability Act of 2010.

[(8) SUPERVISORY AGENCY.—

[(A) IN GENERAL.—The term “Supervisory Agency” means the Federal agency that has primary jurisdiction over a designated financial market utility under Federal banking, securities, or commodity futures laws, as follows:

- [(i) The Securities and Exchange Commission, with respect to a designated financial market utility that is a clearing agency registered with the Securities and Exchange Commission.
- [(ii) The Commodity Futures Trading Commission, with respect to a designated financial market utility that is a derivatives clearing organization registered with the Commodity Futures Trading Commission.
- [(iii) The appropriate Federal banking agency, with respect to a designated financial market utility that is an institution described in section 3(q) of the Federal Deposit Insurance Act.
- [(iv) The Board of Governors, with respect to a designated financial market utility that is otherwise not subject to the jurisdiction of any agency listed in clauses (i), (ii), and (iii).

[(B) MULTIPLE AGENCY JURISDICTION.—If a designated financial market utility is subject to the jurisdictional supervision of more than 1 agency listed in subparagraph (A), then such agencies should agree on 1 agency to act as the Supervisory Agency, and if such agencies cannot agree on which agency has primary jurisdiction, the Council shall decide which agency is the Supervisory Agency for purposes of this title.

[(9) SYSTEMICALLY IMPORTANT AND SYSTEMIC IMPORTANCE.—The terms “systemically important” and “systemic importance” mean a situation where the failure of or a disruption to the functioning of a financial market utility or the conduct of a payment, clearing, or settlement activity could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby

threaten the stability of the financial system of the United States.

[SEC. 804. DESIGNATION OF SYSTEMIC IMPORTANCE.

[(a) DESIGNATION.—

[(1) FINANCIAL STABILITY OVERSIGHT COUNCIL.—The Council, on a nondelegable basis and by a vote of not fewer than $\frac{2}{3}$ of members then serving, including an affirmative vote by the Chairperson of the Council, shall designate those financial market utilities or payment, clearing, or settlement activities that the Council determines are, or are likely to become, systemically important.

[(2) CONSIDERATIONS.—In determining whether a financial market utility or payment, clearing, or settlement activity is, or is likely to become, systemically important, the Council shall take into consideration the following:

[(A) The aggregate monetary value of transactions processed by the financial market utility or carried out through the payment, clearing, or settlement activity.

[(B) The aggregate exposure of the financial market utility or a financial institution engaged in payment, clearing, or settlement activities to its counterparties.

[(C) The relationship, interdependencies, or other interactions of the financial market utility or payment, clearing, or settlement activity with other financial market utilities or payment, clearing, or settlement activities.

[(D) The effect that the failure of or a disruption to the financial market utility or payment, clearing, or settlement activity would have on critical markets, financial institutions, or the broader financial system.

[(E) Any other factors that the Council deems appropriate.

[(b) RESCISSION OF DESIGNATION.—

[(1) IN GENERAL.—The Council, on a nondelegable basis and by a vote of not fewer than $\frac{2}{3}$ of members then serving, including an affirmative vote by the Chairperson of the Council, shall rescind a designation of systemic importance for a designated financial market utility or designated activity if the Council determines that the utility or activity no longer meets the standards for systemic importance.

[(2) EFFECT OF RESCISSION.—Upon rescission, the financial market utility or financial institutions conducting the activity will no longer be subject to the provisions of this title or any rules or orders prescribed under this title.

[(c) CONSULTATION AND NOTICE AND OPPORTUNITY FOR HEARING.—

[(1) CONSULTATION.—Before making any determination under subsection (a) or (b), the Council shall consult with the relevant Supervisory Agency and the Board of Governors.

[(2) ADVANCE NOTICE AND OPPORTUNITY FOR HEARING.—

[(A) IN GENERAL.—Before making any determination under subsection (a) or (b), the Council shall provide the financial market utility or, in the case of a payment, clearing, or settlement activity, financial institutions with advance notice of the proposed determination of the Council.

[(B) NOTICE IN FEDERAL REGISTER.—The Council shall provide such advance notice to financial institutions by publishing a notice in the Federal Register.

[(C) REQUESTS FOR HEARING.—Within 30 days from the date of any notice of the proposed determination of the Council, the financial market utility or, in the case of a payment, clearing, or settlement activity, a financial institution engaged in the designated activity may request, in writing, an opportunity for a written or oral hearing before the Council to demonstrate that the proposed designation or rescission of designation is not supported by substantial evidence.

[(D) WRITTEN SUBMISSIONS.—Upon receipt of a timely request, the Council shall fix a time, not more than 30 days after receipt of the request, unless extended at the request of the financial market utility or financial institution, and place at which the financial market utility or financial institution may appear, personally or through counsel, to submit written materials, or, at the sole discretion of the Council, oral testimony or oral argument.

[(3) EMERGENCY EXCEPTION.—

[(A) WAIVER OR MODIFICATION BY VOTE OF THE COUNCIL.—The Council may waive or modify the requirements of paragraph (2) if the Council determines, by an affirmative vote of not fewer than $\frac{2}{3}$ of members then serving, including an affirmative vote by the Chairperson of the Council, that the waiver or modification is necessary to prevent or mitigate an immediate threat to the financial system posed by the financial market utility or the payment, clearing, or settlement activity.

[(B) NOTICE OF WAIVER OR MODIFICATION.—The Council shall provide notice of the waiver or modification to the financial market utility concerned or, in the case of a payment, clearing, or settlement activity, to financial institutions, as soon as practicable, which shall be no later than 24 hours after the waiver or modification in the case of a financial market utility and 3 business days in the case of financial institutions. The Council shall provide the notice to financial institutions by posting a notice on the website of the Council and by publishing a notice in the Federal Register.

[(d) NOTIFICATION OF FINAL DETERMINATION.—

[(1) AFTER HEARING.—Within 60 days of any hearing under subsection (c)(2), the Council shall notify the financial market utility or financial institutions of the final determination of the Council in writing, which shall include findings of fact upon which the determination of the Council is based.

[(2) WHEN NO HEARING REQUESTED.—If the Council does not receive a timely request for a hearing under subsection (c)(2), the Council shall notify the financial market utility or financial institutions of the final determination of the Council in writing not later than 30 days after the expiration of the date by which a financial market utility or a financial institution could have requested a hearing. All notices to financial institutions under this subsection shall be published in the Federal Register.

[(e) EXTENSION OF TIME PERIODS.—The Council may extend the time periods established in subsections (c) and (d) as the Council determines to be necessary or appropriate.

[SEC. 805. STANDARDS FOR SYSTEMICALLY IMPORTANT FINANCIAL MARKET UTILITIES AND PAYMENT, CLEARING, OR SETTLEMENT ACTIVITIES.

[(a) AUTHORITY TO PRESCRIBE STANDARDS.—

[(1) BOARD OF GOVERNORS.—Except as provided in paragraph (2), the Board of Governors, by rule or order, and in consultation with the Council and the Supervisory Agencies, shall prescribe risk management standards, taking into consideration relevant international standards and existing prudential requirements, governing—

[(A) the operations related to the payment, clearing, and settlement activities of designated financial market utilities; and

[(B) the conduct of designated activities by financial institutions.

[(2) SPECIAL PROCEDURES FOR DESIGNATED CLEARING ENTITIES AND DESIGNATED ACTIVITIES OF CERTAIN FINANCIAL INSTITUTIONS.—

[(A) CFTC AND COMMISSION.—The Commodity Futures Trading Commission and the Commission may each prescribe regulations, in consultation with the Council and the Board of Governors, containing risk management standards, taking into consideration relevant international standards and existing prudential requirements, for those designated clearing entities and financial institutions engaged in designated activities for which each is the Supervisory Agency or the appropriate financial regulator, governing—

[(i) the operations related to payment, clearing, and settlement activities of such designated clearing entities; and

[(ii) the conduct of designated activities by such financial institutions.

[(B) REVIEW AND DETERMINATION.—The Board of Governors may determine that existing prudential requirements of the Commodity Futures Trading Commission, the Commission, or both (including requirements prescribed pursuant to subparagraph (A)) with respect to designated clearing entities and financial institutions engaged in designated activities for which the Commission or the Commodity Futures Trading Commission is the Supervisory Agency or the appropriate financial regulator are insufficient to prevent or mitigate significant liquidity, credit, operational, or other risks to the financial markets or to the financial stability of the United States.

[(C) WRITTEN DETERMINATION.—Any determination by the Board of Governors under subparagraph (B) shall be provided in writing to the Commodity Futures Trading Commission or the Commission, as applicable, and the Council, and shall explain why existing prudential requirements, considered as a whole, are insufficient to ensure that the operations and activities of the designated clear-

ing entities or the activities of financial institutions described in subparagraph (B) will not pose significant liquidity, credit, operational, or other risks to the financial markets or to the financial stability of the United States. The Board of Governors' determination shall contain a detailed analysis supporting its findings and identify the specific prudential requirements that are insufficient.

[(D) CFTC AND COMMISSION RESPONSE.—The Commodity Futures Trading Commission or the Commission, as applicable, shall within 60 days either object to the Board of Governors' determination with a detailed analysis as to why existing prudential requirements are sufficient, or submit an explanation to the Council and the Board of Governors describing the actions to be taken in response to the Board of Governors' determination.

[(E) AUTHORIZATION.—Upon an affirmative vote by not fewer than 2/3 of members then serving on the Council, the Council shall either find that the response submitted under subparagraph (D) is sufficient, or require the Commodity Futures Trading Commission, or the Commission, as applicable, to prescribe such risk management standards as the Council determines is necessary to address the specific prudential requirements that are determined to be insufficient.”

[(b) OBJECTIVES AND PRINCIPLES.—The objectives and principles for the risk management standards prescribed under subsection (a) shall be to—

- [(1) promote robust risk management;
- [(2) promote safety and soundness;
- [(3) reduce systemic risks; and
- [(4) support the stability of the broader financial system.

[(c) SCOPE.—The standards prescribed under subsection (a) may address areas such as—

- [(1) risk management policies and procedures;
- [(2) margin and collateral requirements;
- [(3) participant or counterparty default policies and procedures;
- [(4) the ability to complete timely clearing and settlement of financial transactions;
- [(5) capital and financial resource requirements for designated financial market utilities; and
- [(6) other areas that are necessary to achieve the objectives and principles in subsection (b).

[(d) LIMITATION ON SCOPE.—Except as provided in subsections (e) and (f) of section 807, nothing in this title shall be construed to permit the Council or the Board of Governors to take any action or exercise any authority granted to the Commodity Futures Trading Commission under section 2(h) of the Commodity Exchange Act or the Securities and Exchange Commission under section 3C(a) of the Securities Exchange Act of 1934, including—

- [(1) the approval of, disapproval of, or stay of the clearing requirement for any group, category, type, or class of swaps that a designated clearing entity may accept for clearing;
- [(2) the determination that any group, category, type, or class of swaps shall be subject to the mandatory clearing re-

quirement of section 2(h)(1) of the Commodity Exchange Act or section 3C(a)(1) of the Securities Exchange Act of 1934;

[(3) the determination that any person is exempt from the mandatory clearing requirement of section 2(h)(1) of the Commodity Exchange Act or section 3C(a)(1) of the Securities Exchange Act of 1934; or

[(4) any authority granted to the Commodity Futures Trading Commission or the Securities and Exchange Commission with respect to transaction reporting or trade execution.

[(e) THRESHOLD LEVEL.—The standards prescribed under subsection (a) governing the conduct of designated activities by financial institutions shall, where appropriate, establish a threshold as to the level or significance of engagement in the activity at which a financial institution will become subject to the standards with respect to that activity.

[(f) COMPLIANCE REQUIRED.—Designated financial market utilities and financial institutions subject to the standards prescribed under subsection (a) for a designated activity shall conduct their operations in compliance with the applicable risk management standards.

[SEC. 806. OPERATIONS OF DESIGNATED FINANCIAL MARKET UTILITIES.]

[(a) FEDERAL RESERVE ACCOUNT AND SERVICES.—The Board of Governors may authorize a Federal Reserve Bank to establish and maintain an account for a designated financial market utility and provide the services listed in section 11A(b) of the Federal Reserve Act (12 U.S.C. 248a(b)) and deposit accounts under the first undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 342) to the designated financial market utility that the Federal Reserve Bank is authorized under the Federal Reserve Act to provide to a depository institution, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board of Governors.

[(b) ADVANCES.—The Board of Governors may authorize a Federal Reserve bank under section 10B of the Federal Reserve Act (12 U.S.C. 347b) to provide to a designated financial market utility discount and borrowing privileges only in unusual or exigent circumstances, upon the affirmative vote of a majority of the Board of Governors then serving (or such other number in accordance with the provisions of section 11(r)(2) of the Federal Reserve Act (12 U.S.C. 248(r)(2)) after consultation with the Secretary, and upon a showing by the designated financial market utility that it is unable to secure adequate credit accommodations from other banking institutions. All such discounts and borrowing privileges shall be subject to such other limitations, restrictions, and regulations as the Board of Governors may prescribe. Access to discount and borrowing privileges under section 10B of the Federal Reserve Act as authorized in this section does not require a designated financial market utility to be or become a bank or bank holding company.

[(c) EARNINGS ON FEDERAL RESERVE BALANCES.—A Federal Reserve Bank may pay earnings on balances maintained by or on behalf of a designated financial market utility in the same manner and to the same extent as the Federal Reserve Bank may pay earnings to a depository institution under the Federal Reserve Act, sub-

ject to any applicable rules, orders, standards, or guidelines prescribed by the Board of Governors.

[(d) RESERVE REQUIREMENTS.—The Board of Governors may exempt a designated financial market utility from, or modify any, reserve requirements under section 19 of the Federal Reserve Act (12 U.S.C. 461) applicable to a designated financial market utility.

[(e) CHANGES TO RULES, PROCEDURES, OR OPERATIONS.—

[(1) ADVANCE NOTICE.—

[(A) ADVANCE NOTICE OF PROPOSED CHANGES REQUIRED.—A designated financial market utility shall provide notice 60 days in advance notice to its Supervisory Agency of any proposed change to its rules, procedures, or operations that could, as defined in rules of each Supervisory Agency, materially affect, the nature or level of risks presented by the designated financial market utility.

[(B) TERMS AND STANDARDS PRESCRIBED BY THE SUPERVISORY AGENCIES.—Each Supervisory Agency, in consultation with the Board of Governors, shall prescribe regulations that define and describe the standards for determining when notice is required to be provided under subparagraph (A).

[(C) CONTENTS OF NOTICE.—The notice of a proposed change shall describe—

[(i) the nature of the change and expected effects on risks to the designated financial market utility, its participants, or the market; and

[(ii) how the designated financial market utility plans to manage any identified risks.

[(D) ADDITIONAL INFORMATION.—The Supervisory Agency may require a designated financial market utility to provide any information necessary to assess the effect the proposed change would have on the nature or level of risks associated with the designated financial market utility's payment, clearing, or settlement activities and the sufficiency of any proposed risk management techniques.

[(E) NOTICE OF OBJECTION.—The Supervisory Agency shall notify the designated financial market utility of any objection regarding the proposed change within 60 days from the later of—

[(i) the date that the notice of the proposed change is received; or

[(ii) the date any further information requested for consideration of the notice is received.

[(F) CHANGE NOT ALLOWED IF OBJECTION.—A designated financial market utility shall not implement a change to which the Supervisory Agency has an objection.

[(G) CHANGE ALLOWED IF NO OBJECTION WITHIN 60 DAYS.—A designated financial market utility may implement a change if it has not received an objection to the proposed change within 60 days of the later of—

[(i) the date that the Supervisory Agency receives the notice of proposed change; or

[(ii) the date the Supervisory Agency receives any further information it requests for consideration of the notice.

[(H) REVIEW EXTENSION FOR NOVEL OR COMPLEX ISSUES.—The Supervisory Agency may, during the 60-day review period, extend the review period for an additional 60 days for proposed changes that raise novel or complex issues, subject to the Supervisory Agency providing the designated financial market utility with prompt written notice of the extension. Any extension under this subparagraph will extend the time periods under subparagraphs (E) and (G).

[(I) CHANGE ALLOWED EARLIER IF NOTIFIED OF NO OBJECTION.—A designated financial market utility may implement a change in less than 60 days from the date of receipt of the notice of proposed change by the Supervisory Agency, or the date the Supervisory Agency receives any further information it requested, if the Supervisory Agency notifies the designated financial market utility in writing that it does not object to the proposed change and authorizes the designated financial market utility to implement the change on an earlier date, subject to any conditions imposed by the Supervisory Agency.

[(2) EMERGENCY CHANGES.—

[(A) IN GENERAL.—A designated financial market utility may implement a change that would otherwise require advance notice under this subsection if it determines that—

[(i) an emergency exists; and

[(ii) immediate implementation of the change is necessary for the designated financial market utility to continue to provide its services in a safe and sound manner.

[(B) NOTICE REQUIRED WITHIN 24 HOURS.—The designated financial market utility shall provide notice of any such emergency change to its Supervisory Agency, as soon as practicable, which shall be no later than 24 hours after implementation of the change.

[(C) CONTENTS OF EMERGENCY NOTICE.—In addition to the information required for changes requiring advance notice, the notice of an emergency change shall describe—

[(i) the nature of the emergency; and

[(ii) the reason the change was necessary for the designated financial market utility to continue to provide its services in a safe and sound manner.

[(D) MODIFICATION OR RESCISSION OF CHANGE MAY BE REQUIRED.—The Supervisory Agency may require modification or rescission of the change if it finds that the change is not consistent with the purposes of this Act or any applicable rules, orders, or standards prescribed under section 805(a).

[(3) COPYING THE BOARD OF GOVERNORS.—The Supervisory Agency shall provide the Board of Governors concurrently with a complete copy of any notice, request, or other information it issues, submits, or receives under this subsection.

[(4) CONSULTATION WITH BOARD OF GOVERNORS.—Before taking any action on, or completing its review of, a change proposed by a designated financial market utility, the Supervisory Agency shall consult with the Board of Governors.

[SEC. 807. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST DESIGNATED FINANCIAL MARKET UTILITIES.

[(a) EXAMINATION.—Notwithstanding any other provision of law and subject to subsection (d), the Supervisory Agency shall conduct examinations of a designated financial market utility at least once annually in order to determine the following:

[(1) The nature of the operations of, and the risks borne by, the designated financial market utility.

[(2) The financial and operational risks presented by the designated financial market utility to financial institutions, critical markets, or the broader financial system.

[(3) The resources and capabilities of the designated financial market utility to monitor and control such risks.

[(4) The safety and soundness of the designated financial market utility.

[(5) The designated financial market utility's compliance with—

[(A) this title; and

[(B) the rules and orders prescribed under this title.

[(b) SERVICE PROVIDERS.—Whenever a service integral to the operation of a designated financial market utility is performed for the designated financial market utility by another entity, whether an affiliate or non-affiliate and whether on or off the premises of the designated financial market utility, the Supervisory Agency may examine whether the provision of that service is in compliance with applicable law, rules, orders, and standards to the same extent as if the designated financial market utility were performing the service on its own premises.

[(c) ENFORCEMENT.—For purposes of enforcing the provisions of this title, a designated financial market utility shall be subject to, and the appropriate Supervisory Agency shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the designated financial market utility was an insured depository institution and the Supervisory Agency was the appropriate Federal banking agency for such insured depository institution.

[(d) BOARD OF GOVERNORS INVOLVEMENT IN EXAMINATIONS.—

[(1) BOARD OF GOVERNORS CONSULTATION ON EXAMINATION PLANNING.—The Supervisory Agency shall consult annually with the Board of Governors regarding the scope and methodology of any examination conducted under subsections (a) and (b). The Supervisory Agency shall lead all examinations conducted under subsections (a) and (b)

[(2) BOARD OF GOVERNORS PARTICIPATION IN EXAMINATION.—The Board of Governors may, in its discretion, participate in any examination led by a Supervisory Agency and conducted under subsections (a) and (b).

[(e) BOARD OF GOVERNORS ENFORCEMENT RECOMMENDATIONS.—

[(1) RECOMMENDATION.—The Board of Governors may, after consulting with the Council and the Supervisory Agency, at any time recommend to the Supervisory Agency that such agency take enforcement action against a designated financial market utility in order to prevent or mitigate significant liquidity, credit, operational, or other risks to the financial markets

or to the financial stability of the United States. Any such recommendation for enforcement action shall provide a detailed analysis supporting the recommendation of the Board of Governors.

[(2) CONSIDERATION.—The Supervisory Agency shall consider the recommendation of the Board of Governors and submit a response to the Board of Governors within 60 days.

[(3) BINDING ARBITRATION.—If the Supervisory Agency rejects, in whole or in part, the recommendation of the Board of Governors, the Board of Governors may refer the recommendation to the Council for a binding decision on whether an enforcement action is warranted.

[(4) ENFORCEMENT ACTION.—Upon an affirmative vote by a majority of the Council in favor of the Board of Governors' recommendation under paragraph (3), the Council may require the Supervisory Agency to—

[(A) exercise the enforcement authority referenced in subsection (c); and

[(B) take enforcement action against the designated financial market utility.

[(f) EMERGENCY ENFORCEMENT ACTIONS BY THE BOARD OF GOVERNORS.—

[(1) IMMINENT RISK OF SUBSTANTIAL HARM.—The Board of Governors may, after consulting with the Supervisory Agency and upon an affirmative vote by a majority the Council, take enforcement action against a designated financial market utility if the Board of Governors has reasonable cause to conclude that—

[(A) either—

[(i) an action engaged in, or contemplated by, a designated financial market utility (including any change proposed by the designated financial market utility to its rules, procedures, or operations that would otherwise be subject to section 806(e)) poses an imminent risk of substantial harm to financial institutions, critical markets, or the broader financial system of the United States; or

[(ii) the condition of a designated financial market utility poses an imminent risk of substantial harm to financial institutions, critical markets, or the broader financial system; and

[(B) the imminent risk of substantial harm precludes the Board of Governors' use of the procedures in subsection (e).

[(2) ENFORCEMENT AUTHORITY.—For purposes of taking enforcement action under paragraph (1), a designated financial market utility shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the designated financial market utility was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

[SEC. 808. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST FINANCIAL INSTITUTIONS SUBJECT TO STANDARDS FOR DESIGNATED ACTIVITIES.

[(a) EXAMINATION.—The appropriate financial regulator is authorized to examine a financial institution subject to the standards prescribed under section 805(a) for a designated activity in order to determine the following:

[(1) The nature and scope of the designated activities engaged in by the financial institution.

[(2) The financial and operational risks the designated activities engaged in by the financial institution may pose to the safety and soundness of the financial institution.

[(3) The financial and operational risks the designated activities engaged in by the financial institution may pose to other financial institutions, critical markets, or the broader financial system.

[(4) The resources available to and the capabilities of the financial institution to monitor and control the risks described in paragraphs (2) and (3).

[(5) The financial institution's compliance with this title and the rules and orders prescribed under section 805(a).

[(b) ENFORCEMENT.—For purposes of enforcing the provisions of this title, and the rules and orders prescribed under this section, a financial institution subject to the standards prescribed under section 805(a) for a designated activity shall be subject to, and the appropriate financial regulator shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the financial institution was an insured depository institution and the appropriate financial regulator was the appropriate Federal banking agency for such insured depository institution.

[(c) TECHNICAL ASSISTANCE.—The Board of Governors shall consult with and provide such technical assistance as may be required by the appropriate financial regulators to ensure that the rules and orders prescribed under this title are interpreted and applied in as consistent and uniform a manner as practicable.

[(d) DELEGATION.—

[(1) EXAMINATION.—

[(A) REQUEST TO BOARD OF GOVERNORS.—The appropriate financial regulator may request the Board of Governors to conduct or participate in an examination of a financial institution subject to the standards prescribed under section 805(a) for a designated activity in order to assess the compliance of such financial institution with—

[(i) this title; or

[(ii) the rules or orders prescribed under this title.

[(B) EXAMINATION BY BOARD OF GOVERNORS.—Upon receipt of an appropriate written request, the Board of Governors will conduct the examination under such terms and conditions to which the Board of Governors and the appropriate financial regulator mutually agree.

[(2) ENFORCEMENT.—

[(A) REQUEST TO BOARD OF GOVERNORS.—The appropriate financial regulator may request the Board of Governors to enforce this title or the rules or orders prescribed

under this title against a financial institution that is subject to the standards prescribed under section 805(a) for a designated activity.

[(B) ENFORCEMENT BY BOARD OF GOVERNORS.—Upon receipt of an appropriate written request, the Board of Governors shall determine whether an enforcement action is warranted, and, if so, it shall enforce compliance with this title or the rules or orders prescribed under this title and, if so, the financial institution shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the financial institution was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

[(e) BACK-UP AUTHORITY OF THE BOARD OF GOVERNORS.—

[(1) EXAMINATION AND ENFORCEMENT.—Notwithstanding any other provision of law, the Board of Governors may—

[(A) conduct an examination of the type described in subsection (a) of any financial institution that is subject to the standards prescribed under section 805(a) for a designated activity; and

[(B) enforce the provisions of this title or any rules or orders prescribed under this title against any financial institution that is subject to the standards prescribed under section 805(a) for a designated activity.

[(2) LIMITATIONS.—

[(A) EXAMINATION.—The Board of Governors may exercise the authority described in paragraph (1)(A) only if the Board of Governors has—

[(i) reasonable cause to believe that a financial institution is not in compliance with this title or the rules or orders prescribed under this title with respect to a designated activity;

[(ii) notified, in writing, the appropriate financial regulator and the Council of its belief under clause (i) with supporting documentation included;

[(iii) requested the appropriate financial regulator to conduct a prompt examination of the financial institution;

[(iv) either—

[(I) not been afforded a reasonable opportunity to participate in an examination of the financial institution by the appropriate financial regulator within 30 days after the date of the Board's notification under clause (ii); or

[(II) reasonable cause to believe that the financial institution's noncompliance with this title or the rules or orders prescribed under this title poses a substantial risk to other financial institutions, critical markets, or the broader financial system, subject to the Board of Governors affording the appropriate financial regulator a reason-

able opportunity to participate in the examination;
and

[(v) obtained the approval of the Council upon an affirmative vote by a majority of the Council.

[(B) ENFORCEMENT.—The Board of Governors may exercise the authority described in paragraph (1)(B) only if the Board of Governors has—

[(i) reasonable cause to believe that a financial institution is not in compliance with this title or the rules or orders prescribed under this title with respect to a designated activity;

[(ii) notified, in writing, the appropriate financial regulator and the Council of its belief under clause (i) with supporting documentation included and with a recommendation that the appropriate financial regulator take 1 or more specific enforcement actions against the financial institution;

[(iii) either—

[(I) not been notified, in writing, by the appropriate financial regulator of the commencement of an enforcement action recommended by the Board of Governors against the financial institution within 60 days from the date of the notification under clause (ii); or

[(II) reasonable cause to believe that the financial institution's noncompliance with this title or the rules or orders prescribed under this title poses significant liquidity, credit, operational, or other risks to the financial markets or to the financial stability of the United States, subject to the Board of Governors notifying the appropriate financial regulator of the Board's enforcement action; and

[(iv) obtained the approval of the Council upon an affirmative vote by a majority of the Council.

[(3) ENFORCEMENT PROVISIONS.—For purposes of taking enforcement action under paragraph (1), the financial institution shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the financial institution was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

[SEC. 809. REQUESTS FOR INFORMATION, REPORTS, OR RECORDS.

[(a) INFORMATION TO ASSESS SYSTEMIC IMPORTANCE.—

[(1) FINANCIAL MARKET UTILITIES.—The Council is authorized to require any financial market utility to submit such information as the Council may require for the sole purpose of assessing whether that financial market utility is systemically important, but only if the Council has reasonable cause to believe that the financial market utility meets the standards for systemic importance set forth in section 804.

[(2) FINANCIAL INSTITUTIONS ENGAGED IN PAYMENT, CLEARING, OR SETTLEMENT ACTIVITIES.—The Council is authorized to

require any financial institution to submit such information as the Council may require for the sole purpose of assessing whether any payment, clearing, or settlement activity engaged in or supported by a financial institution is systemically important, but only if the Council has reasonable cause to believe that the activity meets the standards for systemic importance set forth in section 804.

[(b) REPORTING AFTER DESIGNATION.—

[(1) DESIGNATED FINANCIAL MARKET UTILITIES.—The Board of Governors and the Council may each require a designated financial market utility to submit reports or data to the Board of Governors and the Council in such frequency and form as deemed necessary by the Board of Governors or the Council in order to assess the safety and soundness of the utility and the systemic risk that the utility's operations pose to the financial system.

[(2) FINANCIAL INSTITUTIONS SUBJECT TO STANDARDS FOR DESIGNATED ACTIVITIES.—The Board of Governors and the Council may each require 1 or more financial institutions subject to the standards prescribed under section 805(a) for a designated activity to submit, in such frequency and form as deemed necessary by the Board of Governors or the Council, reports and data to the Board of Governors and the Council solely with respect to the conduct of the designated activity and solely to assess whether—

[(A) the rules, orders, or standards prescribed under section 805(a) with respect to the designated activity appropriately address the risks to the financial system presented by such activity; and

[(B) the financial institutions are in compliance with this title and the rules and orders prescribed under section 805(a) with respect to the designated activity.

[(3) LIMITATION.—The Board of Governors may, upon an affirmative vote by a majority of the Council, prescribe regulations under this section that impose a recordkeeping or reporting requirement on designated clearing entities or financial institutions engaged in designated activities that are subject to standards that have been prescribed under section 805(a)(2).

[(c) COORDINATION WITH APPROPRIATE FEDERAL SUPERVISORY AGENCY.—

[(1) ADVANCE COORDINATION.—Before requesting any material information from, or imposing reporting or recordkeeping requirements on, any financial market utility or any financial institution engaged in a payment, clearing, or settlement activity, the Board of Governors or the Council shall coordinate with the Supervisory Agency for a financial market utility or the appropriate financial regulator for a financial institution to determine if the information is available from or may be obtained by the agency in the form, format, or detail required by the Board of Governors or the Council.

[(2) SUPERVISORY REPORTS.—Notwithstanding any other provision of law, the Supervisory Agency, the appropriate financial regulator, and the Board of Governors are authorized to disclose to each other and the Council copies of its examination reports or similar reports regarding any financial market util-

ity or any financial institution engaged in payment, clearing, or settlement activities.

[(d) TIMING OF RESPONSE FROM APPROPRIATE FEDERAL SUPERVISORY AGENCY.—If the information, report, records, or data requested by the Board of Governors or the Council under subsection (c)(1) are not provided in full by the Supervisory Agency or the appropriate financial regulator in less than 15 days after the date on which the material is requested, the Board of Governors or the Council may request the information or impose recordkeeping or reporting requirements directly on such persons as provided in subsections (a) and (b) with notice to the agency.

[(e) SHARING OF INFORMATION.—

[(1) MATERIAL CONCERNS.—Notwithstanding any other provision of law, the Board of Governors, the Council, the appropriate financial regulator, and any Supervisory Agency are authorized to—

[(A) promptly notify each other of material concerns about a designated financial market utility or any financial institution engaged in designated activities; and

[(B) share appropriate reports, information, or data relating to such concerns.

[(2) OTHER INFORMATION.—Notwithstanding any other provision of law, the Board of Governors, the Council, the appropriate financial regulator, or any Supervisory Agency may, under such terms and conditions as it deems appropriate, provide confidential supervisory information and other information obtained under this title to each other, and to the Secretary, Federal Reserve Banks, State financial institution supervisory agencies, foreign financial supervisors, foreign central banks, and foreign finance ministries, subject to reasonable assurances of confidentiality, provided, however, that no person or entity receiving information pursuant to this section may disseminate such information to entities or persons other than those listed in this paragraph without complying with applicable law, including section 8 of the Commodity Exchange Act (7 U.S.C. 12).

[(f) PRIVILEGE MAINTAINED.—The Board of Governors, the Council, the appropriate financial regulator, and any Supervisory Agency providing reports or data under this section shall not be deemed to have waived any privilege applicable to those reports or data, or any portion thereof, by providing the reports or data to the other party or by permitting the reports or data, or any copies thereof, to be used by the other party.

[(g) DISCLOSURE EXEMPTION.—Information obtained by the Board of Governors, the Supervisory Agencies, or the Council under this section and any materials prepared by the Board of Governors, the Supervisory Agencies, or the Council regarding their assessment of the systemic importance of financial market utilities or any payment, clearing, or settlement activities engaged in by financial institutions, and in connection with their supervision of designated financial market utilities and designated activities, shall be confidential supervisory information exempt from disclosure under section 552 of title 5, United States Code. For purposes of such section 552, this subsection shall be considered a statute described in subsection (b)(3) of such section 552.

[SEC. 810. RULEMAKING.

【The Board of Governors, the Supervisory Agencies, and the Council are authorized to prescribe such rules and issue such orders as may be necessary to administer and carry out their respective authorities and duties granted under this title and prevent evasions thereof.

[SEC. 811. OTHER AUTHORITY.

【Unless otherwise provided by its terms, this title does not divest any appropriate financial regulator, any Supervisory Agency, or any other Federal or State agency, of any authority derived from any other applicable law, except that any standards prescribed by the Board of Governors under section 805 shall supersede any less stringent requirements established under other authority to the extent of any conflict.

[SEC. 812. CONSULTATION.

【(a) CFTC.—The Commodity Futures Trading Commission shall consult with the Board of Governors—

【(1) prior to exercising its authorities under sections 2(h)(2)(C), 2(h)(3)(A), 2(h)(3)(C), 2(h)(4)(A), and 2(h)(4)(B) of the Commodity Exchange Act, as amended by the Wall Street Transparency and Accountability Act of 2010;

【(2) with respect to any rule or rule amendment of a derivatives clearing organization for which a stay of certification has been issued under section 745(b)(3) of the Wall Street Transparency and Accountability Act of 2010; and

【(3) prior to exercising its rulemaking authorities under section 728 of the Wall Street Transparency and Accountability Act of 2010.

【(b) SEC.—The Commission shall consult with the Board of Governors—

【(1) prior to exercising its authorities under sections 3C(a)(2)(C), 3C(a)(3)(A), 3C(a)(3)(C), 3C(a)(4)(A), and 3C(a)(4)(B) of the Securities Exchange Act of 1934, as amended by the Wall Street Transparency and Accountability Act of 2010;

【(2) with respect to any proposed rule change of a clearing agency for which an extension of the time for review has been designated under section 19(b)(2) of the Securities Exchange Act of 1934; and

【(3) prior to exercising its rulemaking authorities under section 13(n) of the Securities Exchange Act of 1934, as added by section 763(i) of the Wall Street Transparency and Accountability Act of 2010.

[SEC. 813. COMMON FRAMEWORK FOR DESIGNATED CLEARING ENTITY RISK MANAGEMENT.

【The Commodity Futures Trading Commission and the Commission shall coordinate with the Board of Governors to jointly develop risk management supervision programs for designated clearing entities. Not later than 1 year after the date of enactment of this Act, the Commodity Futures Trading Commission, the Commission, and the Board of Governors shall submit a joint report to the Committee on Banking, Housing, and Urban Affairs and the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the

Committee on Financial Services and the Committee on Agriculture of the House of Representatives recommendations for—

[(1) improving consistency in the designated clearing entity oversight programs of the Commission and the Commodity Futures Trading Commission;

[(2) promoting robust risk management by designated clearing entities;

[(3) promoting robust risk management oversight by regulators of designated clearing entities; and

[(4) improving regulators' ability to monitor the potential effects of designated clearing entity risk management on the stability of the financial system of the United States.

[SEC. 814. EFFECTIVE DATE.]

[This title is effective as of the date of enactment of this Act.]

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MINORITY VIEWS

H.R. 4247 is a dangerous bill that would eliminate federal oversight of the systems involved in completing trillions of dollars in U.S. financial transactions per year. Specifically, the bill calls for the wholesale repeal of Title VIII of the Dodd-Frank Act, which authorizes the Federal Reserve, in coordination with other federal financial regulators, to supervise certain financial market utilities that provide critical infrastructure for transferring, clearing, and settling financial transactions between financial institutions.

In the years leading up to the financial crisis, Wall Street used the unregulated over-the-counter derivative market to fuel demand for subprime mortgage securitization. Specifically, the unrestrained sale of credit default swaps—a type of derivative that supposedly insures the buyer against investment losses—obscured risks in the mortgage-backed securities markets. When the mortgages underlying these securities began to default, swaps sellers such as AIG found themselves without the resources to pay out insurance claims. To stop the spread of devastating losses across the U.S. financial system, the federal government stepped in and bailed out AIG to the tune of \$180 billion in taxpayer funds.

In 2011, the Financial Crisis Inquiry Commission found that the over-the-counter derivatives market was characterized by “uncontrolled leverage; lack of transparency, capital, and collateral requirements; speculation; interconnections among firms; and concentrations of risk. . . .” The Dodd-Frank Act was enacted to protect American taxpayers from similar recklessness on Wall Street. Title VII, for example, generally requires that swaps transactions be cleared through a central clearing agency. This requirement increases the transparency and liquidity of swap transactions and mitigates counterparty credit risks of the type that resulted in the taxpayer bailout of AIG. The new central role of clearing agencies in the U.S. financial system necessitates robust oversight, which is afforded under Title VIII.

Title VIII of Dodd-Frank authorizes the Financial Stability Oversight Council (“FSOC”) to designate certain financial market utilities (FMUs), like swaps clearinghouses, as “systemically important,” and thereby subject to enhanced supervision and regulation by financial regulators. Systemically important FMUs include systems that, if they were to fail, could cause other failures to spread throughout the financial system and thereby undermine the U.S. economy. Additionally, to ensure financial stability, Title VIII gives the Federal Reserve the discretion to provide certain designated FMUs, in unusual or exigent circumstances, with access to the discount window through a collateralized, margined loan. Title VIII also authorizes the Federal Reserve to take emergency enforcement action against a designated FMU if there is reason to believe that an action taken or contemplated by the FMU poses an imminent

risk of substantial harm to financial institutions, critical markets, or the U.S. financial system.

Since the passage of Dodd-Frank, the FSOC, by a unanimous vote, has designated eight FMUs as systemically important pursuant to Title VIII. FSOC concluded that these entities were systemically important based on the aggregate monetary value of transactions processed by the entity; the aggregate exposure of the entity to its counterparties; the interconnectedness of the entity with other FMUs; and the effect that a failure of or disruption to the entity would have on critical markets, financial institutions, and the broader financial system. Additionally, the Federal Reserve has used its Title VIII authority to establish risk-management standards and expectations for certain FMUs, and to work with the Securities and Exchange Commission and the Commodity Futures Trading Commission to share information and conduct examinations of designated FMUs.

H.R. 4247 would do away with the entirety of Title VIII and would thereby eliminate any meaningful oversight of FMUs. In a letter to the Committee opposing H.R. 4247, Americans for Financial Reform explained that, “proper operations and risk management at these firms are critical to trillions of dollars in financial transactions that occur on a daily basis, and failures in risk management or oversight at such firms could lead financial markets to be severely disrupted almost instantaneously.” Public Citizen similarly opposed H.R. 4247, writing that “eliminating [Title VIII] would be reckless.”

H.R. 4247 is dangerous legislation that would weaken regulatory effectiveness and once again allow unchecked systemic risks to hurt hardworking Americans.

For these reasons, we oppose H.R. 4247.

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